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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

MIKO STAFFORD, as an individual  
and on behalf of all others similarly  
situated,

Plaintiffs,

vs.

BRINK'S, INCORPORATED, a  
Delaware Corporation; and DOES 1  
through 50, inclusive,

Defendants.

Case No. 14-1352-MWF(PLAx)

**PLAINTIFF'S NOTICE OF MOTION  
AND MOTION FOR PARTIAL  
SUMMARY JUDGMENT; AND  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

Date: February 8, 2016  
Time: 10:00 a.m.  
Court: 1600  
Judge: Hon. Michael W. Fitzgerald

1 TO DEFENDANT BRINK'S, INCORPORATED AND ITS ATTORNEYS OF  
2 RECORD:

3 PLEASE TAKE NOTICE that on February 8, 2016, at 10:00 a.m., or as  
4 soon thereafter as the matter may be heard in Courtroom 1600 of the United States  
5 District Court for the Central District of California, Western Division, located at  
6 312 N. Spring St., Los Angeles, CA 90012, before the Honorable Michael W.  
7 Fitzgerald, District Judge, Plaintiff Miko Stafford ("Plaintiff") and the certified  
8 class of "All current and former non-exempt California employees who received a  
9 wage statement from Defendant at any time during the period of time from January  
10 3, 2013, through February 20, 2014, and who either did not sign an acceptance of  
11 the Settlement Offer or who submitted a written revocation of the Settlement  
12 Offer" (the "Certified Class"), will and does move the Court for an Order granting  
13 partial summary judgment pursuant to Federal Rule of Civil Procedure 56, in favor  
14 of Plaintiff and the Certified Class on their class-wide claim for (1) violation of  
15 Labor Code Section 226(a)(6) and (2) a finding of injury, as a matter of law,  
16 pursuant to Labor Code Section 226(e).  
17

18 Specifically, Plaintiff seeks partial summary judgment in favor of the  
19 certified Class on Plaintiff's First Cause of Action, as a matter of law, as framed by  
20 the following issue:

21 ISSUE NO. 1: It is undisputed that Defendant Brink's, Incorporated  
22 ("Defendant") has violated California Labor Code Section 226(a)(6) in failing to  
23 include the pay period start date on wage statements issued by Defendant to  
24 Plaintiff and the Certified Class between the time period of January 3, 2013,  
25 through February 20, 2014.

26 ISSUE NO. 2: It is undisputed that as a result of failing to include the pay  
27 period start date on wage statements issued by Defendant to Plaintiff and the  
28 Certified Class between the time period of January 3, 2013, through February 20,

1 2014, Plaintiff and the Certified Class have legally suffered the requisite “injury”  
 2 pursuant to Labor Code § 226(e).

3 Based on the undisputed evidence and the applicable case law, there is no  
 4 doubt that this Motion should be granted. Indeed, as to the PAGA claim, this  
 5 Court has previously ruled that Defendant has violated Labor Code Section  
 6 226(a)(6) by failing to include the pay period start date. The same exact evidence,  
 7 arguments, and ruling should equally apply here. As to the injury element, this  
 8 Court also previously found that Plaintiff and reasonable persons would have  
 9 suffered injury from the Labor Code § 226(a)(6) violation. As the Court has now  
 10 granted class certification, Plaintiff now seeks partial summary judgment as to  
 11 these issues as they apply to Plaintiff and the Certified Class, so that no further  
 12 evidence or argument need to be disputed or tried at trial. .

13 This motion is made following the conference of counsel pursuant to L.R. 7-  
 14 3, which took place on October 29, 2015.

15 The motion will be, and is based upon the attached Memorandum of Points  
 16 and Authorities, the accompanying Request for Judicial Notice and the exhibits  
 17 attached thereto, the Declarations of Plaintiff Miko Stafford and Joyce Brown, and  
 18 the Separate Statement of Uncontroverted Facts and Conclusions of Law, such  
 19 argument of counsel as may be presented at the hearing thereof, and all papers and  
 20 records on file herein.

21 Dated: January 6, 2016

DIVERSITY LAW GROUP, P.C.

22 By: /s/ Larry W. Lee

23 Larry W. Lee

24 Attorneys for Plaintiff and the Class

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

As this Court is well-aware, the facts and law in this case are undisputed. Indeed, this Court has ruled as such in its previous Orders denying Defendant Brink's, Inc.'s ("Defendant") Motion for Summary Judgment, granting Plaintiff Miko Stafford's ("Plaintiff") Motion for Partial Summary Judgment, and granting Plaintiff's Motion for Class Certification.

Again, this case involves Defendant's undisputed class-wide practice of failing to include the pay period start date on its wage statements issued to California employees. In connection with this Court's granting of Plaintiff's Motion for Partial Summary Judgment as to Plaintiff's second cause of action for violation of the Private Attorney Generals Act (the "PAGA"), Labor Code Section 2698, *et seq.*, it found that Defendant violated California Labor Code Section 226(a)(6) as a matter of law with respect to the wage statements Defendant issued to Plaintiff and all other non-exempt employees during the time period of December 16, 2012 through February 20, 2014. As the Court stated in its May 15, 2015 Order ("May 15 Order"), Dkt. No. 92:

Plaintiff asserts that based on the Court's prior Order, it is undisputed that Defendant violated California Labor Code section 226(a)(6) in failing to include the pay period start date on wage statements issued by Defendant to Plaintiff and other California non-exempt employees between December 16, 2012 and February 20, 2014.

**The Court agrees.**

(May 15 Order at p. 10; emphasis added). As such, this very same ruling should now be equally applied to Plaintiff and the Certified Class.

Once a violation of Labor Code § 226(a) has been established, employees who suffer an "injury" based upon a knowing and intentional violation of Labor Code § 226(a) are entitled to various statutory penalties. Based on the amendment

1 to Labor Code § 226's definition of injury, the applicable case law, the undisputed  
 2 evidence herein, and this Court's prior rulings, Plaintiff and the Certified Class ask  
 3 that this Court find that they have met this "injury" element. Significantly, this  
 4 Court previously ruled that Plaintiff and "reasonable persons" would be unable to  
 5 determine the pay period start date from the four corners of the wage statement  
 6 itself. Thus, this Court ruled that Plaintiff and "reasonable persons" have suffered  
 7 injury pursuant to Labor Code Section 226(e). Now that this Court has granted  
 8 Plaintiff's Motion for Class Certification, Plaintiff respectfully requests that this  
 9 Court apply its prior rulings finding of injury, as a matter of law, to Plaintiff and  
 10 the Certified Class.

11 In sum, as there are no disputed facts or law, Plaintiff's Motion for Partial  
 12 Summary Judgment should be granted.

## 13 **II. STATEMENT OF FACTS AND PROCEDUAL HISTORY**

14 During the relevant time period, Plaintiff received various wage statements  
 15 from Defendant, but none of the wage statements specify the start date of the pay  
 16 period. (Fact No. 1). During this same time period, the wages statements issued  
 17 by Defendant to all of its other non-exempt employees also failed to identify the  
 18 start date of the pay period. (Fact No. 2; Declaration of Joyce Brown, ¶¶ 1-3). On  
 19 or about February 21, 2014, after this lawsuit was filed, Defendant revised the  
 20 format of the wage statements it issued to its non-exempt employees so that such  
 21 wage statements would also identify the pay period start date. (Fact No. 3;  
 22 Declaration of Joyce Brown, ¶¶ 4-6).

23 Plaintiff filed a class action Complaint on January 3, 2014 in Los Angeles  
 24 Superior Court, where it was subsequently removed to this jurisdiction on February  
 25 21, 2014. *See* Dkt No. 1. Plaintiff was later granted leave to amend her Complaint  
 26 and filed a First Amended Complaint ("FAC") on October 2, 2014, which is the  
 27 operative complaint. *See* Dkt No. 53. The FAC alleges violation of Labor Code  
 28



1 Section 226(a) for Defendant's failure to include the start date of the pay period on  
 2 its wage statements, and seeks penalties pursuant to Labor Code § 226(e) and  
 3 PAGA.

4 On August 5, 2014, this Court issued its ruling denying Defendant's Motion  
 5 for Summary Judgment ("August 5 Order"). (Fact No. 4). In its August 5 Order,  
 6 this Court stated as follows:

7 Defendant's practice of providing employees with all  
 8 dates and hours worked on each wage statement supports  
 9 the provision of transparency to employees regarding  
 10 their pay. But it does not provide the precise information  
 11 that is required **to be provided by § 226(a)(6): the**  
 12 **inclusive dates of the period**, which allows the  
 13 employee to determine solely from looking at a single  
 14 wage statement the amount she is being paid for that  
 15 particular period. Under Defendant's practice, an  
 16 employee who receives a wage statement indicated that  
 17 she is being paid for work on February 3 through  
 18 February 9, who believes that she should have been paid  
 19 for work on February 2 and February 10, would be  
 20 unable to determine solely by reference to the wage  
 21 statement whether she has not been properly paid, or  
 22 whether her wages from February 2 and February 10 are  
 23 simply included on different wage statements. It is this  
 24 precise confusion that the Legislature sought to avoid in  
 25 passing § 226(a)(6).

26 This Court determines that the plain meaning of §  
 27 226(a)(6) requires an employer to include on each wage  
 28 statement the inclusive dates of the period encompassed  
 by the wage statement, whether or not the employee  
 actually worked on those dates.

(Aug. 5 Order at pp. 5, 7, emphasis added).

This Court further found that Plaintiff suffered an injury due to Defendant's  
 failure to include the pay period start date:

Plaintiff cannot determine the inclusive dates of the  
 period for which she is being paid by reference to the  
 wage statement alone. In order to determine the period  
 dates, Plaintiff must reference multiple wage statements.  
 Accordingly, Plaintiff is deemed to suffer injury under §  
 226(e)(2)(B)(i).

(Aug. 5 Order at p. 8).

1        Thereafter, Plaintiff filed her Motion for Partial Summary Judgment as her  
2        PAGA cause of action.<sup>1</sup> As noted above, this Court issued its May 15 Order  
3        granting Plaintiff's Motion for Partial Summary Judgment (and concurrently  
4        denying Defendant's renewed Motion for Summary Judgment), finding that the  
5        wage statements issued by Defendant to its non-exempt employees during the time  
6        period of December 16, 2012 through February 20, 2014 violated Labor Code §  
7        226(a)(6). (Fact No. 5).

8        On December 1, 2015, this Court issued its Order granting Plaintiff's Motion  
9        for Class Certification. (Fact No. 6). In its Order, this Court ruled that  
10       determining whether an employee has suffered injury from a violation of Labor  
11       Code Section 226(a) is based on a "reasonable person standard" and that this  
12       question is aptly suited for class-wide adjudication:  
13

14                [T]he standard to establish "injury" under Section 226(e)  
15                is whether "a ***reasonable person*** would be able to readily  
16                ascertain the information without reference to other  
17                documents or information," and not whether the plaintiff  
18                or each ***putative class member*** was able to readily  
19                ascertain the information without reference to other  
20                documents or information.

21                The Court concludes that Plaintiff has demonstrated that,  
22                at a minimum, the putative class members share the  
23                common contention ***that a reasonable person cannot***  
24                ***readily ascertain the start of the pay period from the***  
25                ***four corners of the deficient wage statement.***

26        (December 1, 2015 Order ("December 1 Order") at pp. 14, 17; some emphasis  
27        added; citing Cal. Labor Code § 226(e)(2)(C)).

28        Further, this Court noted that the California Legislature's 2013 amendment  
29        to Labor Code Section 226(e) "made clear that the lack of each item of required

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<sup>1</sup> Concurrent therewith, Defendant also renewed its prior Motion for Summary Judgment.

information in and of itself could harm the employee.” (Fact No. 7; December 1, 2015 Order at p. 18; quoting *Garnett v. ADT LLC*, No. 2:14-02851 WBS DAD, 2015 WL 5896065, at \*8-9 (E.D. Cal. Oct. 6, 2015).

This Court also cited its prior Order denying Defendant’s Motion for Summary Judgment, in which the Court concluded that a “reasonable person” would be unable to determine the applicable pay period by looking at the wage statement itself:

[U]nder Defendant's practice, an employee who receives a wage statement indicated that she is being paid for work on February 3 through February 9, who believes that she should have been paid for work on February 2 and February 10, would be unable to determine solely by reference to the wage statement whether she has not been properly paid, or whether her wages from February 2 and February 10 are simply included on different wage statements. It is this precise confusion that the Legislature sought to avoid in passing § 226(a)(6).

(Fact No. 8; December 1, 2015 Order at p. 18).

Plaintiff now seeks to adjudicate the violation of Labor Code § 226(a)(6) and Labor Code § 226(e)’s injury element in Plaintiff’s and the Certified Class’ favor.

### **III. ARGUMENT**

#### **A. The Standard For Summary Judgment**

Federal Rule of Civil Procedure §56(a) provides that a party may move for summary judgment on a claim or a part of each claim, and that the court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. *So. Cal. Gas Co. v. City of Santa Ana*, 336 F. 3d 885, 888 (9th Cir. 2003).

#### **B. Labor Code Section 226(a) Mandates That Employers List the Pay Period Start Date on Wage Statements**

1 Along with the paychecks that employees receive, an employer is mandated  
2 by law to provide a pay stub or “itemized wage statement” to the employee, which  
3 lists information such as total gross wages, total net wages, tax withholdings, and  
4 **pay period dates**. Specifically, Labor Code Section 226(a) states as follows:

5  
6 Every employer shall, semimonthly or at the time of each  
7 payment of wages, furnish each of his or her employees,  
8 either as a detachable part of the check, draft, or voucher  
9 paying the employee's wages, or separately when wages  
10 are paid by personal check or cash, an accurate itemized  
11 statement in writing showing (1) gross wages earned, (2)  
12 total hours worked by the employee, except for any  
13 employee whose compensation is solely based on a  
14 salary and who is exempt from payment of overtime  
15 under subdivision (a) of Section 515 or any applicable  
16 order of the Industrial Welfare Commission, (3) the  
17 number of piece-rate units earned and any applicable  
18 piece rate if the employee is paid on a piece-rate basis,  
19 (4) all deductions, provided that all deductions made on  
20 written orders of the employee may be aggregated and  
21 shown as one item, (5) net wages earned, (6) **the**  
22 **inclusive dates of the period for which the employee is**  
23 **paid. . . .**

24 (Emphasis added.)

25 This Court previously ruled that California Labor Code Section 226(a)(6)  
26 requires an employer to list the pay period start and end dates:

27 Defendant’s practice of providing employees with all  
28 dates and hours worked on each wage statement supports  
the provision of transparency to employees regarding  
their pay. But it does not provide the precise information  
that is required **to be provided by § 226(a)(6): the**  
**inclusive dates of the period**, which allows the  
employee to determine solely from looking at a single  
wage statement the amount she is being paid for that  
particular period.

This Court determines that the plain meaning of §  
226(a)(6) requires an employer to include on each wage  
statement **the inclusive dates of the period** encompassed  
by the wage statement, whether or not the employee  
actually worked on those dates.

(Aug. 5, 2014 Order at pp. 5, 7).

1 As shown above, Defendant admits that the wage statements it issued to  
2 Plaintiff and the Certified Class during the class period failed to identify the pay  
3 period start date. Further, based on this Court's May 15 Order, this Court has  
4 already held that all such wage statements failed to comply with Labor Code  
5 §226(a)(6):

6  
7 As the Court explained in its August 5 Order, Defendant  
8 failed to show that there is a genuine issue of material  
9 fact with respect to the section 226 claim, because the  
10 wage statements Defendant provided Plaintiff failed to  
11 state the beginning date of the pay period for which  
12 Plaintiff was being paid. In fact, in the present  
13 supplemental briefing, Defendant does not dispute that  
14 the wage statements omit the beginning date of the pay  
15 period for which Plaintiff was being paid. As explained  
16 above, the Court has already concluded that "the plain  
17 meaning of § 226(a)(6) requires an employer to include  
18 on each wage statement the inclusive dates of the period  
19 encompassed by the wage statement, whether or not the  
20 employee actually worked those dates." (Aug. 5 Order at  
21 7). Accordingly there is no dispute that Defendant is in  
22 violation of the statute."

23 (May 15 Order at pp. 10-11).

24 Thus, this Court has already previously determined that Defendant provided  
25 wage statements that were in violation of § 226(a)(6).

26 Moreover, this Court's holding is consistent with all current published  
27 authority. Again, in *Willner v. Manpower, Inc.*, 35 F. Supp. 3d 1116 (N.D. Cal.  
28 March 31, 2014), the District Court held that the employer in that case violated  
Labor Code Section 226(a)(6) by failing to list the pay start date. In *Willner*, the  
employer argued that its inclusion of a time card detail listing each and every date  
that the employee worked during the pay period complied with Section 226(a)(6)'s  
requirement to list the "inclusive dates of the period for which the employee is  
being paid." Nevertheless, the District Court held that the employer's wage  
statements violated Labor Code Section 226(a)(6):

[T]he Court concludes that the statements at issue **do not**

1 contain the requisite “the inclusive dates of the period  
2 for which the employee is paid” under Section  
3 226(a)(6), because only the pay period *end date*, and  
4 not the *start date* of the pay period, is included on the  
5 statement. Manpower argues that it satisfied the  
6 “inclusive dates” requirement of Section 226(a)(6) by  
7 including “every work date” for which Willner was  
8 paid. This argument is unpersuasive, because the dates  
9 on which an employee worked in any given pay period  
10 do not necessarily shed light on the date on which the  
11 pay period began.... The “inclusive dates” required  
12 by Section 226(a)(6) refer to the start and end date of  
13 the pay period and necessarily must include the start  
14 date of the pay period in order to give meaning to the  
15 word “inclusive.” A failure to include the start date  
16 of the pay period in a statement constitutes a violation  
17 of Section 226(a)(6).

18 *Id.* at 1128-1129 (emphasis added).

19 Likewise, in *McKenzie v. Fed. Exp. Corp.*, 765 F. Supp. 2d 1222  
20 (C.D.Cal.2011), the District Court also granted summary judgment in favor of  
21 plaintiff on the same exact identical issue here, finding that defendant violated  
22 Section 226(a)(6) and PAGA, as a matter of law, by failing to include the pay  
23 period beginning date on its employees’ wage statements. *Id.* at 1229-34.

24 Here, in its very own declaration submitted through Joyce Brown,  
25 Defendant’s Director, HR Systems, Defendant has admitted that up until February  
26 21, 2014, the wage statements issued to Defendant’s non-exempt employees failed  
27 to identify the pay period begin date. (Fact Nos. 2 & 3); (Declaration of Joyce  
28 Brown, ¶¶ 1-6).

Thus, based on the undisputed facts and controlling legal authority,  
including this Court’s own holding, it is undisputed that Defendant’s wage  
statements violate Labor Code Section 226(a)(6). As such, with respect to the First  
Cause of Action, this Court should find that the wage statements Defendant issued  
to Plaintiff and the Certified Class violated Labor Code § 226(a)(6).

**C. The Wage Statements Issued by Defendant to Plaintiff and the  
Certified Class Suffered Injury Pursuant to Labor Code § 226(e)**



1 Labor Code § 226(e)(1) states:

2 An employee suffering ***injury*** as a result of a knowing  
3 and intentional failure by an employer to comply with  
4 subdivision (a) is entitled to recover the greater of all  
5 actual damages or fifty dollars (\$50) for the initial pay  
6 period in which a violation occurs and one hundred  
7 dollars (\$100) per employee for each violation in a  
subsequent pay period, not to exceed an aggregate  
penalty of four thousand dollars (\$4,000), and is entitled  
to an award of costs and reasonable attorney's fees.

8 Labor Code § 226(e)(1) (emphasis added). Based upon Labor Code § 226(e)'s  
9 definition of "injury" and the undisputed evidence herein, this Court should find  
10 that this injury element has been established in favor of Plaintiff and the Certified  
11 Class.

12 As previously briefed to this Court, Labor Code Section 226(e) was  
13 amended by S.B. 1255, effective January 1, 2013, by which the Legislature  
14 reaffirmed the general principle that "an employee is ***deemed to suffer injury*** ... if  
15 the employer fails to provide accurate and complete information as required by any  
16 one or more of items (1) to (9), inclusive, of subdivision (a) and the employee  
17 cannot promptly and easily determine from the wage statement alone one or more  
18 of the following: ... any of the other information required to be provided on the  
19 itemized wage statement pursuant to items (2) to (4), ... **(6) [inclusive pay**  
20 **periods]**, and (9) of subdivision (a). (Emphasis added.)

21 Through S.B. 1255, the Legislature intended to clarify Labor Code Section  
22 226(e)'s injury requirement. *See, e.g., Soto v. Diakon Logistics (Delaware), Inc.*,  
23 2013 WL 4500693, \*9 (S.D. Cal. 2013) ("The Senate Bill Analysis indicates that  
24 because of the contradictory and inconsistent interpretations of what constitutes  
25 'suffering injury' ... in the various court cases ... it is necessary to provide further  
26 clarity on the issue"); *Seckler v. Kindred Healthcare Operating Group, Inc.*, 2013  
27 WL 812656, \*11-12 (C.D. Cal. 2013); *Fields v. West Marine Prods. Inc.*, 2014 WL  
28 547502, \*8 (N.D. Cal. 2014) ("Plaintiffs cite decisions holding that the injury

1 requirement is minimal. This interpretation is reinforced by the 2013 statutory  
2 amendment to Section 226 *clarifying* the injury requirement by providing a  
3 statutory definition.”) (Emphasis added).

4 Indeed, in *Willner* the Court held that the employee established injury, as a  
5 matter of law, arising from the employer’s failure to include the pay period start  
6 date: “[t]he Court concludes that ... an employee cannot promptly determine from  
7 the wage statements alone ... the start date of the pay period .... Accordingly, the  
8 evidence before the Court establishes that Willner suffered injury within the  
9 meaning of Section 226(e).” 2014 WL 1303495, at \*12.

10 Moreover, as a review of cases on the issue of what constitutes an “injury”  
11 under §226(e) *after* the 2013 amendment demonstrates, the amendment altered the  
12 law such that if a violation of §226(a) is established, then “injury” is automatically  
13 deemed to have occurred.

14 For instance, in *Fobroy v. Video Only, Inc.*, 2014 U.S. Dist. 160365 (N.D.  
15 Cal Nov. 14, 2014), in which the plaintiff asserted that wage statements issued by  
16 the defendant did not include pay period dates, the court determined that there was  
17 an “injury” under the post-amendment §226(e) injury definition, but not under the  
18 pre-amendment §226(e)’s language. *Id.* at 9-10. The *Fobroy* court ruled that  
19 “Prior to January 2013, courts interpreted section 226(e) as requiring plaintiff to  
20 show more than a mere violation of section 226(a)....” *Id.* at \*9. However, after  
21 the amendment to §226(e), “injury is presumed.” *Id.* at 10. Thus, *Fobroy*  
22 demonstrates that the 2013 amendment only acted to minimize a plaintiff’s burden  
23 of proving “injury” under § 226(e).

24 Numerous other District Court cases establish that “injury” is now automatic  
25 once a section 226(a) violation has been established. “An employee is said to have  
26 suffered injury under section 226(a) where a wage statement fails to include the  
27 start date of a pay period as required by section 226(a)(6).....” *Achal v. Gate*  
28 *Gourmet, Inc.*, 2015 U.S. Dist. LEXIS 92148 at \*59 (N.D. Cal. July 14, 2015).



1 *Achal* also notes that “the injury contemplated by the amended statute is concerned  
2 less about an employee's ability to ascertain the information and more about the  
3 broader public policy” of enforcing the requirements of Labor Code § 226. *Id* at  
4 \*64. *See also Novoa v. Charter Communications, LLC*, 2015 U.S. Dist. LEXIS  
5 53102 at \*40 (E.D. Cal. April 22, 2015) (holding that there is an “injury” under §  
6 226(e) due to failure to list pay periods on wage statements because it would  
7 “require Plaintiff to engage in mathematical computations to reconstruct time  
8 records and determine if he was correctly paid.”); *Willner*, 35 F. Supp. 3d 1116,  
9 1132 (N.D. Cal. 2014) (“The Court concludes that, based on the wage statements  
10 submitted by Manpower, an employee cannot promptly determine from the wage  
11 statements alone...the start date of the pay period...[a]ccordingly, the evidence  
12 before the Court establishes that Willner suffered injury within the meaning of  
13 section 226(e).); *Brewer v. General Nutrition Corp.*, 2015 U.S. Dist. LEXIS  
14 114860, at \*28-29 (N.D. Cal. Aug. 27, 2015) (“*Labor Code section 226(e)*  
15 provides that an employee is ‘deemed to suffer injury ... if the employer fails to  
16 provide accurate and complete information as required’”; employees were deemed  
17 to have suffered injury because, among other things, the employer’s wage  
18 statements did not list the pay period start date).

19 Here, it is undisputed that the pay period start date was never identified on  
20 any of the wage statements Defendant issued to Plaintiff and the Certified Class  
21 during the class period. In addition, this Court has already held, based on this lack  
22 of the pay period start date, that the injury element is established as to Plaintiff.  
23 Specifically, in this Court’s August 5 Order, this Court determined that  
24 Defendant’s failure to put the pay period start date on wage statements caused  
25 “injury” under §226(e). The Court’s analysis was straightforward. It recognized  
26 that this was a situation in which an employee is “deemed” to have suffered injury  
27 because the employee “cannot promptly and easily determine from the wage  
28 statement alone.” Thus, “Plaintiff cannot determine the inclusive dates of the

1 period for which she is being paid by reference to the wage statement alone. In  
2 order to determine the period dates, Plaintiff must reference multiple wage  
3 statements. Accordingly, ***Plaintiff is deemed*** to suffer injury under section  
4 226(e)(2)(B)(i).” (See August 5, 2014 Order Denying Motion for Summary  
5 Judgment (“1<sup>st</sup> MSJ Order”) at p. 8).

6 As the format of the wage statements issued to the Certified Class was  
7 exactly the same as those issued to Plaintiff, which includes the failure to identify  
8 the pay period start date, the injury element that this Court previously held to be  
9 established as to Plaintiff, should also be equally applied to the Certified Class.  
10 Moreover, based on the substantial canon of case law since the 2013 amendment to  
11 226(e), there can be no dispute that “injury” is automatic where there is a violation  
12 of 226(a)(6). As such, Plaintiff’s current Motion should be granted.

### 13 **III. CONCLUSION**

14 For the foregoing reasons, Plaintiff respectfully requests that this Court grant  
15 her Motion for Partial Summary Judgment as to Plaintiff’s First Cause of Action as  
16 to finding that (1) Defendant’s wage statements issued to Plaintiff and the Certified  
17 Class failed to comply with Labor Code §226(a)(6), and (2) Plaintiff and the  
18 Certified Class have established Labor Code § 226(e)’s injury element.

19  
20 Dated: January 6, 2016

DIVERSITY LAW GROUP, P.C.

21  
22 By: /s/ Larry W. Lee

Larry W. Lee

Attorneys for Plaintiff and the Class